

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

GINGER DAYTON, an individual;

)

)

Plaintiffs,

)

)

vs.

)

Civil Action No.:

)

3:07CV599-MEF

STEVEN CHAD TAGGART, et al.;

)

)

Defendants.

)

PLAINTIFF'S REQUESTED JURY CHARGES

COMES NOW the Plaintiff, by and through counsel and submits the following proposed jury charges to be used in the trial of the above-styled case.

1. When a judge and a jury sit together as a court of law it is the duty of the judge to see that the trial progresses in an orderly fashion; to rule upon all legal matters that are presented; to define the issues involved and instruct the jury as to the law applicable to the particular case. It will be your duty as jurors to follow the law as to stated to you by the judge. You will therefore render a verdict in accordance with the facts as you determine them from the evidence and the law as given to you by the court. (APJI 1.05).

_____ Given

_____ Denied

2. You will be the sole and exclusive judges of the facts. It will be your duty to attempt to reconcile the testimony of all the witnesses so as to make them all speak the truth, if this can be done reasonably. If you cannot reasonably reconcile all of the testimony it is then your duty to consider the testimony with the view of determining what the true facts are. In so doing you may accept or reject any part of the testimony of any witness, and accept only the testimony you consider worthy of belief. (APJI 1.06).

_____ Given

_____ Denied

3. During this trial I will rule on objections by counsel as to the admissibility of testimony and other evidence. It will be the privilege of counsel and his duty, to make such objections to the offer of evidence which counsel deems illegal and improper. You must not concern yourself with the reasons for my rulings since they are controlled and required by rules of law. You are not to speculate as to possible answers to questions which I do not require to be answered. the overruling of objections to evidence is not intended to indicate the weight to be given such evidence by you. Such admitted evidence will be considered along with all of the other evidence. You are to disregard all evidence which may be excluded by the Court. (APJI 1.08)

_____ Given

_____ Denied

4. An agent is a person who, by agreement with another called the principal, acts for the principal and is subject to his control. The agreement may be oral or written or implied from the conduct of the parties and may be with or without compensation.
(APJI 3.00)

_____ Given

_____ Denied

5. When an agent is engaged to perform a certain service, whatever he does to that end or in furtherance of the employment is deemed to be an act done within the scope of the employment.
(APJI 3.01)

_____ Given

_____ Denied

6. A principal is liable to others for the negligent acts or omissions of his agent, done within the scope of his employment and within the line of his duties. (APJI 3.06)

_____ Given

_____ Denied

7. Ladies and Gentlemen of the jury, the Court will now instruct you on the law of damages. The burden is on the Plaintiff to reasonably satisfy you from the evidence of the truthfulness of her claim. If after a consideration of all of the evidence and in this case, you are not reasonably satisfied of the truthfulness of the Plaintiff's claim, your verdict should be for the Defendants. In this event you would go no further. This would end your deliberations. On the other hand, if after a consideration of all the evidence in the case you are reasonably satisfied of the truthfulness of the Plaintiff's claim, your verdict should be for the Plaintiff. In this event it will be necessary for you to arrive at an amount to be awarded in the verdict from which I will read to you and describe later in my charge. I now give you the following rules of law to assist you in your deliberations in arriving at an amount in the event you find for the Plaintiff. Plaintiff makes two statements of her claim. By these statements she claims compensatory and punitive damages. . (APJI 11.00)

_____ Given

_____ Denied

8. Compensatory or actual damages are allowed and should be awarded where the plaintiff reasonably satisfies the jury from the evidence that plaintiff has been injured or damages as a proximate result of an act of negligence on the part of the defendants. (APJI 11.01)

_____ Given

_____ Denied

9. The purpose of awarding compensatory damages is to fairly and reasonably compensate the injured party for the loss or injury sustained. Compensatory damages are intended as money compensation to the party wronged, to compensate them for their injury and other damages which have been inflicted upon them as a proximate result of the wrong complained of. (APJI 11.02)

_____ Given

_____ Denied

10. The plaintiffs claim compensation for the following items or elements of damages:

- medical expenses
- loss of earnings
- physical pain and suffering
- mental anguish
- permanent injuries and disabilities
- disfigurement (APJI 11.04)

_____ Given

_____ Denied

11. The law has no fixed monetary standard to compensate for physical pain and mental anguish. This element of damage is left to your good sound judgment and discretion as to what amount would reasonably and fairly compensate the plaintiffs for such physical pain and mental anguish as you find from the evidence the plaintiffs did suffer.

If you are reasonably satisfied from the evidence that the plaintiffs have undergone pain and suffering or mental anguish as a proximate result of the injury in question, you should award a sum which will reasonably and fairly compensate them for such pain, suffering or mental anguish already suffered by them and for any pain, suffering or mental anguish which you are reasonably satisfied from the evidence that they are reasonably certain to suffer in the future.

(APJI 11.05)

_____ Given

_____ Denied

12. It is for you to determine from the evidence the nature, extent and duration of the Plaintiff's injuries. If you are reasonably satisfied from the evidence that the Plaintiff has suffered permanent injuries, and that such injuries proximately resulted from the wrongs complained of, then you should include in your verdict such sum as you determine to be reasonable compensation for such injuries.

(APJI 11.06)

_____ Given

_____ Denied

13. If you find for the plaintiff, he would be entitled to recover for all damages which are the proximate result of defendant's negligence, including damages for the aggravation of any injury or condition which may have existed at the time of the incident made the basis of plaintiff's complaint. (APJI 11.07)

_____ Given

_____ Denied

14. The measure of damages for medical expenses is all reasonable expenses necessarily incurred for doctor's and medical bills which the plaintiffs have paid or become obligated to pay and the amount of the reasonable expenses of medical care, treatment and services reasonably certain to be required in the future. The reasonableness of, and the necessity for, such expenses are matters for your determination from the evidence. (APJI 11.09)

_____ Given

_____ Denied

15. In determining the amount of damages for loss of earnings, you should consider any evidence of the plaintiff's earning capacity, her earnings, the manner in which she ordinarily occupied her time before the injury, her inability to pursue her occupation, and determine what she was reasonably certain to have earned during the time so lost, had she not been disabled.

(APJI 11.10)

_____ Given

_____ Denied

16. In arriving at the amount of your award for any loss of future earning capacity, if you are satisfied the plaintiff will sustain such a loss, you should consider what the plaintiff's health, physical ability and earning power or capacity were before the accident and what they are now; the nature and extent of his injuries, and whether or not they are reasonably certain to be permanent; or if not permanent, the extent of their duration; all to the end of determining the effect, if any, of

his injury upon his future earning capacity. After you determine the nature and the extent of his future loss of earning capacity you would then determine the amount of money which would reasonably and fairly compensate him for such future loss. (APJI 11.11 AMENDED)

_____ Given

_____ Denied

17. An inference of a fact is a conclusion of the existence of a fact not known or proved, which may reasonably arise from facts that are known or proved. (APJI 15.00)

_____ Given

_____ Denied

18. The jury may draw reasonable inferences from the evidence, but there must be a reasonable connection between the fact proved and the ultimate fact inferred. Inferences may be drawn only from facts established by the evidence. An inference may not be based upon another inference. (APJI 15.01)

_____ Given

_____ Denied

19. You are the sole judges of the evidence and of the credibility of the witnesses. You may accept or reject any part of the testimony of any witness and you should accept only the testimony you consider worthy of belief. In determining the weight to be accorded the testimony of any witness, you may consider the demeanor of the witness while on the witness stand; his apparent candor or evasion or the existence or non-existence of any bias or interest. (APJI 15.02)

_____ Given

_____ Denied

20. A deposition is the testimony of a party or witness, taken before trial in writing, under oath of affirmation, before some judicial officer, in answer to oral [written] questions. The deposition of the witness has been offered and has been received in evidence. The testimony of this witness by deposition is evidence in the case just as if the witness had appeared and testified in person. During your deliberations you should consider this testimony along with all the other evidence material to the issues. (APJI 15.03)

_____ Given

_____ Denied

21. An expert witness is one who by education, training and/or experience has attained such skill, knowledge or experience of some science, profession, business or occupation, not of common knowledge to the average layman. (APJI 15.07)

_____ Given

_____ Denied

22. Witnesses have testified in this case as experts and have expressed opinions based upon assumed facts which were set forth in hypothetical questions. The weight to be accorded such testimony is dependent entirely upon the truth of the material facts stated in the hypothetical questions and before considering the opinions of the experts, you should first examine carefully all the material facts stated in the hypothetical questions and be reasonably satisfied that they have substantially been proved to be true. (APJI 15.08)

_____ Given

_____ Denied

23. Witnesses have testified in this case as experts and have been permitted to express an opinion (and) (or) draw a conclusion. In passing upon the facts you are not required to accept the conclusions or expressed opinions of expert witnesses, but must determine for yourselves the weight to be given to such testimony and evidence when considered in connection with all other evidence material to the issue. (APJI 15.09)

24. The driver of a motor vehicle upon a public highway is under a duty to exercise reasonable care to avoid inflicting [injury] [damage] upon others who may be lawfully using the same public highway.

Reasonable care means such care as a reasonably prudent person would exercise under the same or similar circumstances. (APJI 26.00)

_____ Given

_____ Denied

25. A driver of a motor vehicle must keep a lookout for those who are also using the highway and must exercise due care to anticipate the presence of others upon the highway. A motor vehicle driver is chargeable with knowledge of what a prudent and vigilant operator would have seen, and is negligent if he fails to discover a vehicle which he could have discovered in time to avoid the injury. (APJI 26.08)

_____ Given

_____ Denied

26. Negligence means the failure to exercise ordinary care; that is, such as a reasonably prudent person would have exercised under the same or similar circumstances.

Therefore, "negligence" is the failure to do what a reasonably prudent person would have done under the same or similar circumstances, or, the doing of something which a reasonably prudent person would not have done under the same or similar circumstances. (APJI 28.01)

_____ Given

_____ Denied

27. The duty owed by the defendant to the plaintiff was to exercise reasonable care not to injure or damage the plaintiff; that is, to exercise such care as a reasonably prudent person would have exercised under the same or similar circumstances. (APJI 28.02)

_____ Given

_____ Denied

28. The negligence of two (or more) persons may concur and combine to proximately cause (injuries) (and) (damages). Causes "concur and combine" when they join together to produce a given result. (APJI 28.04)

_____ Given

_____ Denied

29. If you are reasonably satisfied from the evidence in this case that (all) of the defendants were negligent and that their negligence concurred and combined to proximately cause the (injuries) (and) (damages) claimed by the plaintiff, then each defendant is liable to the plaintiff. (APJI 28.05)

_____ Given

_____ Denied

30. If you are reasonably satisfied from the evidence in this case that the defendant was negligent and that the defendant's negligence concurred and combined with the negligence of a third person, not a party to the suit, to proximately cause the (injuries) (and) (damages) claimed by the plaintiff, that fact would not relieve the defendant from liability for his own negligence; and the plaintiff would be entitled to recover from the defendant. (APJI 28.06)

_____ Given _____ Denied

31. In lawsuits such as this, all persons are jointly and severally liable for the proximate results of their negligence. (APJI 28.08).

_____ Given _____ Denied

32. The proximate cause of an injury is that cause which in the natural and probable sequence of events, and without the intervention of any new or independent cause, produces the injury and without which such injury would not have occurred.

(APJI 33.00).

_____ Given _____ Denied

33. Ladies and gentlemen of the Jury, for your convenience, the court has prepared for your use in this case forms of verdict which will be explained to you. No inferences are to be drawn by you from the fact that the court has supplied you with these forms, or from the order in which the court reads them to you. When you have reached a verdict you will select and complete the form which corresponds to your verdict and which is to be signed by your foreman. All twelve of you must agree on any verdict which you return to the court. (APJI 37.00)

_____ Given _____ Denied

Respectfully submitted,

/s/ Richard F. Horsley
Richard F. Horsley
Attorney for Plaintiff

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CERTIFICATE OF SERVICE

_____ I hereby certify that I have served a copy of the above and foregoing Jury Charges on all counsel of records listed below by placing a copy of same in the United States Mail, first class, postage pre-paid on this the 28th day July, 2008.

**/s/ Richard F. Horsley
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